

# GIBSON DUNN

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January 22, 2021

VIA ECF

**MEMO ENDORSED**

Hon. Denise L. Cote  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *In re Inclusive Access Course Materials Antitrust Litigation*, No. 20-md-2946 (DLC),  
this Document relates to: 20cv6314 (DLC)

Dear Judge Cote:

I write as counsel to Barnes & Noble College Booksellers, LLC, and Barnes & Noble Education, Inc. (collectively “BNED”), pursuant to Rule 8(B) of this Court’s rules of Individual Practices In Civil Cases, to respectfully request that the Court issue an order permitting the filing under seal of: (1) the unredacted version of Defendants’ Memorandum of Law In Support of Defendants’ Motion to Dismiss Retailer Plaintiffs’ Second Amended Class Action Complaint (“Memorandum”); and (2) Exhibit D to the Declaration of Rachel S. Brass In Support of Defendants’ Motion to Dismiss The Plaintiff Retailers’ Second Amended Class Action Complaint (“Exhibit D”).

The limited redaction of the Memorandum—consisting of less than a half dozen words—and the sealing of Exhibit D are warranted to protect Defendant Barnes & Noble’s confidential information and trade secrets. *See, e.g., KeyBank Nat'l Ass'n v. Element Transp. LLC*, 2017 WL 384875, at \*3 (S.D.N.Y. 2017); *PDV Sweeny, Inc. v. ConocoPhillips Co.*, 2014 WL 4979316, at \*3 (S.D.N.Y. Oct. 6, 2014). Specifically, Exhibit D reflects a confidential contract that BNED has with one of the universities it serves. The terms of that agreement contain sensitive financial information and terms that BNED competitively negotiates with each of the universities with which it contracts. Should the terms of this agreement be subjected to public scrutiny, BNED’s future counterparties would be able to compare these terms to those they are negotiated with BNED, to BNED’s competitive disadvantage. *See Gracyzk v. Verizon Commc'ns, Inc.*, 2020 WL 1435031, at \*8-\*9 (S.D.N.Y. Mar. 24, 2020). In addition, access to the document by BNED’s competitors, including co-defendant Follett Higher Education Group, Inc., would weaken BNED’s ability to compete in the marketplace. *Id.*

In short, BNED respectfully requests that this Court enter an order sealing the minimally redacted version of the Memorandum as well as Exhibit D.

Granted. 01.25.21.

Respectfully submitted,

/s Rachel S. Brass

  
DENISE COTE  
United States District Judge

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CC: All Counsel of Record